

### ***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-19, 66 and 68 are pending in the application, with claim 1 being the independent claim. Claims 1, 8, 19 and 66 have been amended to more clearly point out and distinctly claim the subject matter of the present invention. Claim 70 is sought to be cancelled without prejudice to or disclaimer of the subject matter therein. Descriptive support for the amendment is found in the specification as filed. The amendment introduces no new matter and its entry is respectfully requested.

Claims 1, 2, 4-10, 12-17, 19, 66, 68 and 70 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,256,964 to Drevfors ("Drevfors") in view of U.S. Patent No. 5,860,461 to Helmut ("Helmut"). Claims 3, 11 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Drevfors in view of Helmut as applied to claims 1 and 10, and further in view of Applicant's alleged admitted prior art.

Based on the above amendment and the following Remarks, the Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and they be withdrawn.

***I. Claims 1, 2, 4-10, 12-17, 19, 66 and 68 are Patentable over Drevfors in view of Helmut***

Pending claims 1, 2, 4-10, 12-17, 19, 66 and 68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Drevfors in view of Helmut. For the following reasons, this rejection is respectfully traversed.

The Examiner argues that "Helmut is relied upon for the teaching of the membrane fitted over the filling aperture the membrane being configured to be disposed in a first position in which the membrane is substantially impenetrable to vapour and a second position in which the membrane has been displaced to permit the insertion of an elongated member into the package." (Office Action at pp.7-8.) Once again, the Applicant submits that Helmut fails to cure the deficiencies of Drevfors. Specifically, Drevfors discloses that the cap of the bottle is open (and the sterilizing agent is not sealed from the surrounding environment) after a sterilization agent is

sprayed and that the bottle is not sealed in any way to hold the sterilizing agent inside of the bottle. *See* col.4, ll.41-58.

While Helmut may disclose a seal which includes first and second positions (*see* col.2, ll.60-63), this does mean that the combination of Helmut with Drevfors to arrive at the method recited by claim 1 of the present invention would have been obvious. Specifically, the Examiner's combination of Helmut with Drevfors ignores the fact that Drevfors *requires* that the bottle is open to the surrounding environment after sterilization to permit the sterilization agent to "vaporize and depart from the interior of the packaging container." *See* col.4, ll.49-52. As such, the combination of Helmut with Drevfors would render the method disclosed by Drevfors inoperable.

While the Applicant disagrees with the Examiner's arguments with regard to the combination of Drevfors and Helmut, the Applicant has further amended the claims in the interest of advancing prosecution. Independent claim 1, as amended, recites the steps of "removing a portion of the sterilizing vapour at the filling location by configuring the membrane to be disposed in the second position" and filling the package with a product at the filling location". Drevfors and Helmut, taken alone or in combination, fail to disclose or even fairly suggest all of the recitations of claim 1.

Drevfors discloses that a "vertically reciprocating pipe 9 is fed down into the opening of the packaging container and is connected to the source of sterilization agent, e.g. gas or spray-form hydrogen peroxide." *See* col.4, ll.41-44. Next, "the pipe 9 is removed and the packaging container is displaced to station D, where the pipe 10 is, in a corresponding manner, displaced down into the opening of the packaging container and is connected to a source of hot sterile air. Hereby, the sterilization agent will, in a known manner, be vaporized and depart from the interior of the packaging container." *See* col.4, ll.46-52. Finally, "[a]fter completed sterilization, the pertinent packaging container is displaced to station E, where a vertically movable filler pipe 11 is lowered into the packaging container and connected to a source of the intended contents" and filled. *See* col.4, ll.54-58.

Thus, Drevfors discloses that the steps of removing the sterilizing vapour and the step of filling the package with "intended contents" are performed at *separate locations*. Claim 1 of the

present invention, on the other hand, recites that the steps of removing the sterilizing vapour and filling the package occur at the same location (i.e., the “filling location”).

Further, as discussed above, the Examiner turns to Helmut merely for its disclosure of a membrane having first and second positions. This disclosure does nothing to remedy the aforementioned deficiencies of Drevfors. As such, Drevfors in view of Helmut fails to disclose all of the recitations of claim 1.

Because Drevfors and Helmut, taken alone or in combination, each fail to disclose or suggest the recited method including the steps of “removing a portion of the sterilizing vapour at the filling location by configuring the membrane to be disposed in the second position” and filling the package with a product at the filling location”, claim 1 is allowable over Drevfors in view of Helmut. Claims 2, 4-10, 12-17, 19, 66 and 68 depend from claim 1 and are also allowable for at least these reasons. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejection of claims 1, 2, 4-10, 12-17, 19, 66 and 68 under 35 U.S.C. § 103(a).

**II. *Claims 3, 11 and 18 are Patentable over Drevfors in view of Helmut and Applicant’s alleged admitted prior art***

Claims 3, 11 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Drevfors in view of Helmut as applied to claims 1 and 10, and further in view of Applicant’s alleged admitted prior art. For the following reasons, this rejection is respectfully traversed.

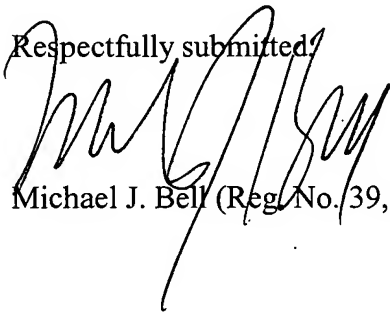
As set forth above, Drevfors in view of Helmut fails to disclose all of the recitations of claim 1. Therefore, claim 1 is allowable over Drevfors in view of Helmut. Claims 3, 11 and 18 depend from claim 1 and are allowable for the at least these reasons. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejection of claims 3, 11 and 18 under 35 U.S.C. § 103(a).

***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

  
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